THE HON'BLE MR JUSTICE K.C. BHANU

–

WRIT PETITION NO : 22649 of 2004

–

Date: 27.07.2005

Between:

Palla Srinivas, S/o. Late Sri Satya Rao

Aged 33 years, Occu: Senior TOA (TG),

CO-II, Office of General Manager,

Telecom District (C), M/s. Bharat Sanchar Nigam Ltd.,

Visakhapatnam, R/o. Visakhapatnam

& 23 others.

… PETITIONERS

AND

The Union of India, rep., by the Secretary to Govt.

Department of Telecommunications,

Ministry of Communications &

Information Technology, Sanchar Bhawan,

New Delhi – 110 001 & 3 others.

…RESPONDENTS

–

–

-

-

-

-

-

-

-

-

-

-

ORAL ORDER:

The writ petition is filed to declare the letter No.TA/LC/5-231/2003 dated 7.4.2004 of the 4th respondent, as arbitrary, illegal and quash the same by directing the respondents to consider the cases of the petitioners herein for grant of relaxation in the qualifying standard of the Junior Accounts Officer Part-I Examination held from 29th to 31st October, 1999 on the same lines as mentioned in the letter No.12-15/2002-DE, dated 10.03.2003, issued in respect of the Junior Telecom Officers 15% Quota Examination held in the years 1999 and 2000 with all consequential benefits such as promotion, seniority, pay and allowances etc.

When the writ petition is taken up for hearing, it is submitted by the learned counsel for the petitioners and admitted by the learned counsel appearing for the respondents that the subject matter of this writ petition is squarely covered by the order of this Court, dated 13.07.2007, passed in W.P.Nos.16015 & 16413 of 2004, wherein this Court considered a similar issue and allowed the said writ petitions.

Recording the said submission and following the abovementioned order, this writ petition is also allowed. No orders as to costs.

27.07.2005

ES

3. The brief facts that are necessary for disposal of the writ petition may be stated as follows:

The petitioners herein are employed as Senior TOAs/STS(O)/Telegraph Masters/SS(O)/TS(O)/SA in the Department of Telecommunications/Bharat Sanchar Nigam Limited. They wrote the Junior Accounts Officers Part-I examination held on 29th and 31st October 1999, but could not get the qualifying marks. They stated that in respect of JTOs Examination held on 10th and 11th February, 1996, number of candidates were declared as qualified by granting relaxation in qualifying standard by the 3rd respondent vide his letter No.TA/RE/3-5/94/II, dated 19-06-1997, and the same was denied in respect of JAO Part-I Examinees.

The petitioners herein and others filed O.A.Nos.901 of 2003 and batch of cases before the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, seeking a direction to the authorities concerned, including the respondents herein to extend the benefit of relaxation of qualifying standards of JAO Part-I examination on par with the JTOs in terms of the letter dated 10.3.2003 of the Joint Deputy Director General (Departmental Examination) Dept. of Telecommunication, New Delhi, and to declare them as passed in JAO examination held in October, 1999/March, 2003 based on the aggregate 30% marks secured by them in JAO examination and with all other consequential benefits. The Tribunal, by a common order dated 6.1.2004 disposed of the said O.As. directing the respondents to consider those O.As. as representation submitted by the applicants for extending the benefit of relaxed standards in the qualifying marks to them in JAO Part-I Examination held during October, 1999 on the same lines as was granted to JTO's vide letter dated 10.3.2003 issued by the 3rd respondent by reducing the aggregate qualifying marks to 30% with all consequential benefits, by passing appropriate orders within a period of two months. The second respondent, by letter No.TA/LC/5-231/2003 dated 7-4-2004, intimated to the petitioners that it is not possible to consider the request for relaxation of standards in qualifying marks for JAO examination (Part-I & Part-II), since the JTO examination and JAO examination are two separate examinations altogether and these cannot be compared in any way and even to the same JAO Examination held in different years. Aggrieved by the same, the present writ petitions are filed.

4. The learned Standing Counsel appearing for the respondents filed counter-affidavit contending that the Joint Deputy Director General (Departmental Examination), New Delhi, issued decision in compliance with the order in O.A.No.901 of 2003, that:

(a) the JTO and JAO examinations are two separate examinations and cannot be compared in any way;

(b) the availability of vacancies does not automatically entitle an employee

to be promoted without his/her

fulfilling the minimum eligibility

criteria; and

(c) the qualifying standards had already

been relaxed in favour of JAO Part II

examination held in December, 2000

before declaring the results and

therefore the request of the

petitioners for further relaxation

cannot be acceded to.

It is further contended that this Court dismissed the writ petition No.12614 of 2004 filed by JTOs for grant of relaxed standard in qualifying marks for the examination of JTOs (35% quota) held on 6th May, 2000 on the same lines as was granted in respect of JTO (15% quota) examination held during the years 1999 and 2000 vide letter No.12-15/2002-De dated 10th March, 2003, holding that the relaxation given in favour of the JTO (15% quota) cannot be extended to JTOs (35% quota) and upheld the decision of BSNL. Hence, the writ petitions are liable to be dismissed.

5. The learned counsel for the petitioners contended that having relaxed the minimum qualifying marks for JTOs the same benefit should have been extended to the JAOs also where the promotions from in-service candidates is hundred per cent, whereas the appointment to the JTO is 50% by direct recruitment, 15% for in-service candidates and 35% through Departmental screening test and therefore though the nature and functions of both the cadres are different, but at the same time the pay scale and cadre is one and the same and hence there is a discrimination. He further contended that no tenable reasons are assigned in the impugned proceedings for the said discrimination. Hence, he prays to allow the writ petition.

6. On the other hand the learned Standing Counsel appearing for the respondents vehemently contended that the nature and functions of JTO and JAO are entirely

different and simply because minimum marks for qualifying promotion is reduced for JTO, that does not mean the same can be extended to the JAO also and that depending upon the nature of work the qualification have been prescribed and that this Court also upheld the said view of the BSNL in W.P.No.12614 of 2004 dated 02.12.2004 and hence there are absolutely no grounds to interfere with the impugned proceedings.

7. Heard the learned counsel for the petitioners as well as the learned Standing counsel appearing for the respondents.

8. Admittedly, all the petitioners are working in the feeder category viz., Section Supervisors or Telephone Supervisors and they are eligible for promotion on being successful by getting a minimum marks in Part-I which consists of six papers. The persons who qualified in Part-I examination were only allowed to write Part-II examination. One has to secure 40% marks in each paper. It is not in dispute that if an in-service person fails in one paper, again he has to write all the examinations for the next year unless a candidate secures more than 60% marks in each paper. Each part consists of six papers. It is also not in dispute that there are about 2000 vacancies in the cadre of JAOs. They are not being filled up from time to time perhaps may be the reason the rigidity of the test.

9. For not considering their case, the petitioners filed O.A.No.1313 of 2003 before the Central Administrative Tribunal, Hyderabad Bench. The Tribunal, by its order dated 06.01.2004 allowed the applications and held as follows:

> " In the result, all these OA's are disposed of directing the respondents to consider these OA's as representations of the applicants for extending the benefit of relaxed standards in the qualifying marks to them in the JAO Examinations held in 1999 and 2000, part-I and part-II on the same lines as was granted to JTO's vide letter dated 10.3.2003 with all consequential benefits by passing appropriate orders within a period of two months from the date of receipt of a copy of this order."

In pursuance of the said direction, the respondents passed the impugned order dated 07.04.2004 which reads as follows:

" In obedience to the directions of the Hon'ble CAT, HD the matter of relaxation of standards in qualifying marks for JAO examination, as was done in the case of JTO examination was considered by the competent authority and I am directed to convey the decision of the competent authority that;

(iv) The JTO Examination and JAO Examination are two separate examinations altogether and these cannot be compared in any way and even the same JAO examination held in different years cannot be compared.

(v) The JAO Part-I examination has been for five times between the year 1997-2003 and JAO Part-II examination has been held seven times during the years 1996-2003.

(vi) The availability of vacancies in JAO cadre/officiating in JAO cadre does not automatically enable an employee to be promoted without fulfilling the eligibility criteria laid down in the Recruitment Rules not withstanding the fact that the employee may be performing duties to the best satisfaction of superiors."

Therefore, basing on the above reasons the respondents passed the impugned order stating that it was not possible to consider the request for relaxation of standards in qualifying marks for JAO examination (Part-I & Part-II). Challenging the same the present writ petition is filed.

10. There cannot be any discrimination in respect of two cadres though the nature of duties and functions of JAOs are entirely different from JTOs. But at the same time the cadre and the pay scales are one and the same so also the minimum qualifying marks for both the examinations relating to JAO and JTO, till it was relaxed, is one and the same by virtue of the proceedings of the respondents dated 10th March 2003. The required minimum aggregate marks has been relaxed in respect of JTOs for the purpose of giving promotions which reads as follows:

" The required minimum aggregate marks in all four subjects will be 30% for OC candidates and 20% for SC/ST candidates. However, in respect of results which have been finalized between 27th July, 1997 and 3rd October, 2000 there would be no separate standards for SC/ST candidates and 30% will be uniformly applied to all candidates."

11. The contention of the learned counsel for the petitioner is that having reduced the minimum marks for qualifying in Part-I examination in respect of JTO, the same benefit should have been extended to the JAOs also. There cannot be any dispute for depending upon the vacancies. It is for the respondents to take appropriate decision for giving relaxation in respect of minimum marks. The said policy decision cannot be challenged unless there is a discrimination and arbitrariness. The respondents can prescribe their own standards and prescribe the minimum marks for the qualifying examination depending upon the nature of functions and duties of each category. But here is a case where the relaxation was given for JTO where the direct recruitment to the extent of 50% is available. So, there cannot be any discrimination.

12. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question. The impugned order does not indicate as to the basis for which denying the same benefit, which was extended to the JTOs.

13. As rightly contended by the learned counsel for the petitioners that in view of the rigidity in passing of text, no one is qualifying in Part-I and Part-II examinations and therefore consequently there are about 2000 vacancies were left open without filling those posts whereunder the feeder category persons were being asked for officiating the JAO posts. Considering these aspects since the impugned orders does not indicate the reasons for discrimination at all, appropriate decision has to be taken by the first respondent, depending upon the nature of duties and functions of both the cadres, in giving relaxation to the petitioners.

14. Therefore, these writ petitions are allowed directing the respondents to take appropriate decision in this regard in accordance with law and also keeping in view the relaxation given to the JTOs as per the proceedings dated 10th March 2003 within a period of four months from the date of receipt of a copy of this order. No

costs.